

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
FRED C. ZINDA dba ZINDA & SONS
AUTO REPAIR,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 81-187

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and civil penalty for violation of open burning statutes and codes, came on for hearing before the Pollution Control Hearings Board; Gayle Rothrock, Chairman, and Larry Faulk, presiding; at Vancouver, Washington, on February 14, 1983. The informal proceedings were electronically recorded.

Appellant Fred C. Zinda appeared pro se. Respondent Southwest Air Pollution Control Authority appeared by its attorney David Jahn.

Witnesses were sworn and testified. Exhibits were examined. From the testimony heard and exhibits examined, the Pollution Control

1 Hearings Board makes these

2 FINDINGS OF FACT

3 I

4 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
5 a certified copy of its Regulation I containing respondent's
6 regulations and amendments thereto.

7 II

8 On October 12, 1982, at 8:42 p.m., the appellant Mr. Zinda allowed
9 or caused an outdoor fire of prohibited materials (primarily building
10 tar paper and shingles) to occur at the site of his business, Zinda
11 and Sons Auto Repair, 5212 East Fourth Plain Boulevard, Vancouver,
12 Washington, 98661.

13 III

14 The fire pile was approximately eight feet long and two feet wide
15 at the rear of the premises. At the bottom of the fire pile, somewhat
16 charred, lay pieces of asphalt roofing, engine parts and rubber items.

17 IV

18 The Vancouver Fire Department was called to the scene of the
19 unattended fire and arrived and extinguished the fire, which took
20 about ten minutes.

21 V

22 On October 18, 1982, appellant received a regular notice of
23 violation and a letter from the Executive Director of respondent
24 agency levying a \$250 fine. Appellant appealed this penalty to the
25 Executive Director of Southwest Air Pollution Control Authority, who,

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1 in turn, told him to appeal to the Board at its offices in
2 Olympia/Lacey in accordance with WAC 371-08, rules for filing appeals.

3 VI

4 The appellant mailed his appeal to the Board, it arriving here
5 November 12, 1982.

6 VII

7 Appellant has no prior record of violation of SWAPCA regulations.
8 Appellant indicated he was responsible for the fire and that he was
9 not aware of the control regulations.

10 VIII

11 Any Conclusion of Law which should be deemed a Finding of Fact is
12 hereby adopted as such.

3 From these Findings the Board comes to these

14 CONCLUSIONS OF LAW

15 I

16 The Legislature of the State of Washington has enacted the
17 following policy on outdoor fires:

18 It is the policy of the state to achieve and maintain
19 high levels of air quality and to this end to
20 minimize to the greatest extent reasonably possible
21 the burning of outdoor fires. Consistent with this
policy, the legislature declares that such fires
should be allowed only on a limited basis under
strict regulation and close control (RCW 70.94.740).

22 Pursuant to this and other legislative authority, the respondent has
23 adopted its Regulation I, Section 400-035, which provides in relevant
24 part:

25 No person shall ignite, cause to be ignited, permit

26 FINAL FINDINGS OF FACT,
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1 to be ignited, or suffer, allow, or maintain any open
2 fire within the jurisdiction of the Authority, except
3 as provided in this Regulation...(2) Open burning may
4 be done under permit (under certain conditions)...

5 Appellant's failure to inquire about an open burning permit,
6 permissible burning seasons, and lawful disposal methods for
7 commercial trash caused him to be engaged in open burning of
8 prohibited materials which cannot qualify for permit and, therefore,
9 to be in violation of Section 400-035(2).

10 II

11 Under our State's policy of limited outdoor burning, it is not
12 safe to assume that even a little prohibited material may be disposed
13 of by open burning. Before igniting outdoor fires, it is the
14 responsibility of the citizen concerned to become aware of and to
15 adhere reasonably close to air pollution control rules, such as
16 respondent's Regulation I. Because, however, the violations committed
17 by the appellant are apparently his first offenses against
18 respondent's Regulation I, part of the assessed penalty should be
19 suspended.

20 III

21 Any Finding of Fact which should be deemed a Conclusion of Law is
22 hereby adopted as such.

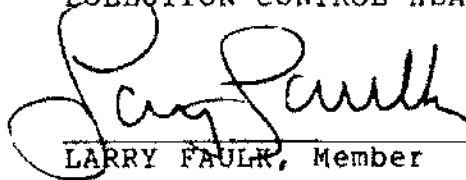
23 From these Conclusions, the Pollution Control Hearings Board
24 enters this
25

ORDER

The notice of violation and \$250 civil penalty is affirmed;
provided, however, that \$200 of the penalty is suspended on condition
that appellant not violate respondents regulations for a period of one
year after this Order becomes final.

DONE this 14th day of March, 1983.

POLLUTION CONTROL HEARINGS BOARD


LARRY FAULK, Member


GAYLE ROTHROCK, Chairman